

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT – II)**

**Item No. 207**  
**(IB)-627(ND)2018**

**IA-5750/2021, IA-5490/2021, IA-5492/2021,**  
**IA-5493/2021, IA-5830/2021, IA-5831/2021,**  
**IA-1289/2019**

**IN THE MATTER OF:**

**M/s. Khera Enterprises** ... **Applicant/Petitioner**

**Versus**

**M/s. Talwar Agencies Pvt. Ltd.** ... **Respondent**

**Under Section: 9 of IBC, 2016**

**Order delivered on 08.04.2024**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ**  
**HON'BLE MEMBER (J)**

**SH. SUBRATA KUMAR DASH**  
**HON'BLE MEMBER (T)**

**PRESENT:**

**For the Assignee** : Adv. Abhay Kaushik, Adv. Himani Babbar

**For the Liquidator** : Adv. Maya Gupta

**Hearing Through: VC and Physical (Hybrid) Mode**

**ORDER**

**IA-5490/2021, IA-5492/2021, IA-5493/2021, IA-5830/2021, IA-5831/2021:** On 12.06.2023 we passed the following order:-

**IA-5750/2021, IA-5490/2021, IA-5492/2021, IA-5493/2021, IA-5830/2021 & IA-5831/2021:** In terms of the order dated 19.04.2023, we had sought the views of the IBBI in the matter. However, no one is present on behalf of the IBBI. On a specific query made by the Bench about the value of all the assets involved in the IAs, Ld. Liquidator indicated that in the application filed under Section 66 of the IBC, 2016 the value of assets involved could be around Rs. one crore. In the other four IAs, the value of assets involved could be around Rs. 50 lakhs. She is directed to file an affidavit within 7 days indicating the IA-wise value of assets involved, which together have been assigned to a third party at a sum of Rs. 50,000/- only. In the affidavit to be filed by the Liquidator, it shall also be indicated when the SCC, as required in terms of Regulation 31A, was consulted and whether the SCC discussed the eligibility of the assignee herein to submit the resolution plan for the CD. The relevant minutes of the meeting of SCC be enclosed with the affidavit.

The Applicant in all the IAs would also file separate affidavits indicating how the application for substitution filed by them is maintainable, more particularly on the face of the provisions of Sections 43,45,47,50 & 66 of the IBC, 2016.

In the meantime, Ld. Counsel appearing for the Liquidator is directed to inform the IBBI again for their representation on the next date of hearing. List on 17.07.2023.

The Ld. Counsel for the Applicants in IA (assignee) submitted that the affidavit in terms of the aforementioned order has been filed by the Liquidator. The para 4 of the affidavit reads thus:-

*4. "I state that in consonance with Regulation 37A of the IBBI (Liquidation Process) Regulations, 2016 (as amended), I have assigned the debts forming part of applications bearing no. IA/914/2019, IA/1289/2019, IA/1290/2019, IA/1291/2019 and IA/3010/2020 in favour of Mr. Ritesh Agarwal vide Deed of Assignment dated 30th October, 2021 in consultation with the Stakeholders Consultation Committee which can be fortified from the minutes dated October 22, 2021. That. IA/3010 was ratified by filing fresh application vide IA/5228/2021 and therefore, the same was assigned by execution of addendum agreement dated 17/11/2021.*

*Copy of the minutes of the stakeholders meeting held on October 22, 2021 is attached as Annexure 3."*

The Ld. Counsel also submitted that on recovery of the amount of debt, the 40% of the recovered amount would be paid to the creditors qua the corporate debtor. In this regard he could make reference to the para 5 of the affidavit which reads thus:-

*5. "That the gist of the proposal submitted by the Assignee at the time of bidding was as follows:*

*#Bid value is Rs. 50.000/- for the actionable claims;*

*# Any recovery from the cases filed by Liquidator with Adjudicating Authorities (after deduction of expenses incurred for such recovery) will be taken by the Bidder upto 60% and remaining 40% shall be transfer to the liquidator account to distribute the funds in accordance with the provisions of section 53 of the IBC."*

A perusal of Regulation 37A along with explanation thereto of IBBI (Liquidation Process) Regulation, 2016, could reveal that a liquidator may assign or transfer NRRAs through a transparent in consultation with the stakeholders' consultation committee.

In accordance with the Regulation 37A the NRRAs can be assigned to any person who is eligible to submit plan for resolution of insolvency of corporate

debtor. In the explanation (ibid), it has been amplified that for the purposes of Regulation, not readily realisable asset means any asset included in the liquidation estate which could not be sold through available options and includes contingent or disputed assets. The explanation further clarify that the assets underlying would also include, those involved in underlying proceedings for preferential, under-valued, extortionate credit and fraudulent transactions referred to in Section 43 to 51 and Section 66 of the Code. The Regulation 37A (ibid) along with explanation reads thus:-

*“37A. Assignment of not readily realisable assets. (1) A liquidator may assign or transfer a not readily realisable asset through a transparent process, in consultation with the stakeholders’ consultation committee in accordance with regulation 31A, for a consideration to any person, who is eligible to submit a resolution plan for insolvency resolution of the corporate debtor.*

*Explanation. — For the purposes of this sub-regulation, “not readily realisable asset” means any asset included in the liquidation estate which could not be sold through available options and includes contingent or disputed assets and assets underlying proceedings for preferential, undervalued, extortionate credit and fraudulent transactions referred to in sections 43 to 51 and section 66 of the Code.”*

Maybe There can be a thought that the Sections 43, 45, 50 & 66 provides for filing for applications under these provisions by RP/Liquidator only, thus the third parties i.e. the assignee may have no locus to pursue the applications filed in terms of these provisions. Nevertheless, once the liquidator or RP who are indubitably responsible/liable to institute the proceedings (ibid), assign the assets involved in such applications to third party, the said third party would definitely step into the shoes of the liquidator. In a way, in terms of the provisions of Regulation 37A of the Regulations (ibid), the liquidator transfer his responsibility to recover the assets qua which the PUFEE proceedings are instituted to the assignee, of course for the consideration, viz., the assignee derived certain benefit out of the transfer/assignment. The Regulation 37A (ibid) might be inserted in the IBBI (Liquidation Process) Regulations, 2016, to

expedite the liquidation proceedings and to save the liquidation cost. Once the affidavit filed by liquidator reveal that the 40% of such assets which are pursued by the liquidator as NRRA will go the creditors, we do not find any embargo in allowing the captioned applications.

**The applications stand allowed** and the Applicants are allowed to be substituted as Applicants in respective IAs viz., IA No. 5228/2021, IA-914/2019, IA-1290/2019, IA-1289/2019, IA-1291/2019.

There may be some semblance that the assignment may be collusive exercise between the ex-promoters, assignee and the liquidator. Firstly, once the decision is taken under the advice of SCC, it may not be open for this Tribunal to have such semblance. Secondly, if it is viewed that the assignee would not be entitled to pursue the PUFEE, then the remedy available with the assignee may be to institute the proceedings before Civil Court. In such a situation, if the semblance of doubt qua the affairs of Liquidator and assignee is correct then may be the assignee would not even institute any civil proceedings to recover the NRRA and then the corporate debtor/CD/creditors would be in total loss. **These IAs stands disposed of.**

**IA-1289/2019:-** As prayed by the Ld. Counsel for the Applicant/assignee as also by the liquidator, the hearing is deferred to 28.05.2024.

**IA-5750/2021:** List the IA on 28.05.2024.

**Sd/-  
(SUBRATA KUMAR DASH)  
MEMBER (T)**

**Sd/-  
(ASHOK KUMAR BHARDWAJ)  
MEMBER (J)**